

110TH CONGRESS
2D SESSION

S. 2539

To amend the Internal Revenue Code of 1986 to provide a special depreciation allowance for certain property placed in service during 2008 and 2009.

IN THE SENATE OF THE UNITED STATES

JANUARY 22 (legislative day, JANUARY 3), 2008

Mr. SPECTER introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide a special depreciation allowance for certain property placed in service during 2008 and 2009.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SPECIAL DEPRECIATION ALLOWANCE FOR**
4 **CERTAIN PROPERTY PLACED IN SERVICE**
5 **DURING 2008 AND 2009.**

6 (a) IN GENERAL.—Subsection (k) of section 168 of
7 the Internal Revenue Code of 1986 is amended to read
8 as follows:

9 “(k) 50 PERCENT BONUS DEPRECIATION FOR CER-
10 TAIN PROPERTY.—

1 “(1) ADDITIONAL ALLOWANCE.—In the case of
2 any qualified property—

3 “(A) the depreciation deduction provided
4 by section 167(a) for the taxable year in which
5 such property is placed in service shall include
6 an allowance equal to 50 percent of the ad-
7 justed basis of the qualified property, and

8 “(B) the adjusted basis of the qualified
9 property shall be reduced by the amount of
10 such deduction before computing the amount
11 otherwise allowable as a depreciation deduction
12 under this chapter for such taxable year and
13 any subsequent taxable year.

14 “(2) QUALIFIED PROPERTY.—For purposes of
15 this subsection—

16 “(A) IN GENERAL.—The term ‘qualified
17 property’ means property—

18 “(i)(I) to which this section applies
19 which has a recovery period of 20 years or
20 less,

21 “(II) which is computer software (as
22 defined in section 167(f)(1)(B)) for which
23 a deduction is allowable under section
24 167(a) without regard to this subsection,

25 “(III) which is water utility property,

1 “(IV) which is qualified leasehold im-
2 provement property,

3 “(V) which is qualified restaurant
4 property (as defined in subsection (e)(7),
5 but without regard to subparagraph (A)
6 thereof), or

7 “(VI) which is qualified retail im-
8 provement property,

9 “(ii) the original use of which com-
10 mences with the taxpayer on or after the
11 starting date,

12 “(iii) which is—

13 “(I) acquired by the taxpayer on
14 or after the starting date and before
15 the ending date, but only if no written
16 binding contract for the acquisition
17 was in effect before the starting date,
18 or

19 “(II) acquired by the taxpayer
20 pursuant to a written binding contract
21 which was entered into on or after the
22 starting date and before the ending
23 date, and

24 “(iv) which is placed in service by the
25 taxpayer before the ending date, or, in the

case of property described in subparagraph
(B) or (C), before the date that is 1 year
after the ending date.

“(B) CERTAIN PROPERTY HAVING LONGER
PRODUCTION PERIODS TREATED AS QUALIFIED
PROPERTY.—

“(i) IN GENERAL.—The term ‘quali-
fied property’ includes any property if such
property—

“(I) meets the requirements of
clauses (i), (ii), and (iii) of subpara-
graph (A),

“(II) has a recovery period of at
least 10 years or is transportation
property,

“(III) is subject to section 263A,
and

“(IV) meets the requirements of
clause (ii) or (iii) of section
263A(f)(1)(B) (determined as if such
clauses also apply to property which
has a long useful life (within the
meaning of section 263A(f))).

“(ii) ONLY PRE-ENDING DATE BASIS
ELIGIBLE FOR ADDITIONAL ALLOWANCE.—

1 In the case of property which is qualified
 2 property solely by reason of clause (i),
 3 paragraph (1) shall apply only to the ex-
 4 tent of the adjusted basis thereof attrib-
 5 utable to manufacture, construction, or
 6 production before the ending date.

7 “(iii) TRANSPORTATION PROPERTY.—
 8 For purposes of this subparagraph, the
 9 term ‘transportation property’ means tan-
 10 gible personal property used in the trade
 11 or business of transporting persons or
 12 property.

13 “(iv) APPLICATION OF SUBPARA-
 14 GRAPH.—This subparagraph shall not
 15 apply to any property which is described in
 16 subparagraph (C).

17 “(C) CERTAIN AIRCRAFT.—The term
 18 ‘qualified property’ includes property—

19 “(i) which meets the requirements of
 20 clauses (ii) and (iii) of subparagraph (A),

21 “(ii) which is an aircraft which is not
 22 a transportation property (as defined in
 23 subparagraph (B)(iii)) other than for agri-
 24 cultural or firefighting purposes,

1 “(iii) which is purchased and on which
 2 such purchaser, at the time of the contract
 3 for purchase, has made a nonrefundable
 4 deposit of the lesser of—

5 “(I) 10 percent of the cost, or

6 “(II) \$100,000, and

7 “(iv) which has—

8 “(I) an estimated production pe-
 9 riod exceeding 4 months, and

10 “(II) a cost exceeding \$200,000.

11 “(3) EXCEPTIONS.—

12 “(A) ALTERNATIVE DEPRECIATION PROP-
 13 erty.—This subsection shall not apply to any
 14 property to which the alternative depreciation
 15 system under subsection (g) applies, deter-
 16 mined—

17 “(i) without regard to paragraph (7)
 18 of subsection (g) (relating to election to
 19 have system apply), and

20 “(ii) after application of section
 21 280F(b) (relating to listed property with
 22 limited business use).

23 “(B) ELECTION OUT.—If a taxpayer
 24 makes an election under this subparagraph with
 25 respect to any class of property for any taxable

year, this subsection shall not apply to all property in such class placed in service during such taxable year.

“(4) SPECIAL RULES.—

“(A) SELF-CONSTRUCTED PROPERTY.—In the case of a taxpayer manufacturing, constructing, or producing property for the taxpayer’s own use, the requirements of paragraph (2)(A)(iii) shall be treated as met if the taxpayer begins manufacturing, constructing, or producing the property after the starting date and before the ending date.

“(B) SALE-LEASEBACKS.—For purposes of subparagraph (C) and paragraph (2)(A)(ii), if property is—

“(i) originally placed in service on or after the starting date by a person, and

“(ii) sold and leased back by such person within 3 months after the date such property was originally placed in service, such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback referred to in subclause (II).

1 “(C) SYNDICATION.—For purposes of
2 paragraph (2)(A)(ii), if—

3 “(i) property is originally placed in
4 service on or after the starting date by the
5 lessor of such property,

6 “(ii) such property is sold by such les-
7 sor or any subsequent purchaser within 3
8 months after the date such property was
9 originally placed in service (or, in the case
10 of multiple units of property subject to the
11 same lease, within 3 months after the date
12 the final unit is placed in service, so long
13 as the period between the time the first
14 unit is placed in service and the time the
15 last unit is placed in service does not ex-
16 ceed 12 months), and

17 “(iii) the user of such property after
18 the last sale during such 3-month period
19 remains the same as when such property
20 was originally placed in service,

21 such property shall be treated as originally
22 placed in service not earlier than the date of
23 such last sale.

1 “(D) LIMITATIONS RELATED TO USERS
 2 AND RELATED PARTIES.—This subsection shall
 3 not apply to any property if—

4 “(i) the user of such property (as of
 5 the date on which such property is origi-
 6 nally placed in service) or a person which
 7 is related (within the meaning of section
 8 267(b) or 707(b)) to such user or to the
 9 taxpayer had a written binding contract in
 10 effect for the acquisition of such property
 11 at any time before the starting date, or

12 “(ii) in the case of property manufac-
 13 tured, constructed, or produced for such
 14 user’s or person’s own use, the manufac-
 15 ture, construction, or production of such
 16 property began at any time before the
 17 starting date.

18 “(5) COORDINATION WITH SECTION 280F.—For
 19 purposes of section 280F—

20 “(A) AUTOMOBILES.—In the case of a pas-
 21 senger automobile (as defined in section
 22 280F(d)(5)) which is qualified property, the
 23 Secretary shall increase the limitation under
 24 section 280F(a)(1)(A)(i) by \$7,650.

1 “(B) LISTED PROPERTY.—The deduction
2 allowable under paragraph (1) shall be taken
3 into account in computing any recapture
4 amount under section 280F(b)(2).

5 “(6) DEDUCTION ALLOWED IN COMPUTING
6 MINIMUM TAX.—For purposes of determining alter-
7 native minimum taxable income under section 55,
8 the deduction under subsection (a) for qualified
9 property shall be determined under this section with-
10 out regard to any adjustment under section 56.

11 “(7) STARTING DATE; ENDING DATE.—For pur-
12 poses of this paragraph—

13 “(A) STARTING DATE.—The term ‘starting
14 date’ means January 1, 2008.

15 “(B) ENDING DATE.—The term ‘ending
16 date’ means January 1, 2010.

17 “(8) QUALIFIED LEASEHOLD IMPROVEMENT
18 PROPERTY.—For purposes of this subsection—

19 “(A) IN GENERAL.—The term ‘qualified
20 leasehold improvement property’ means any im-
21 provement to an interior portion of a building
22 which is nonresidential real property if—

23 “(i) such improvement is made under
24 or pursuant to a lease (as defined in sub-
25 section (h)(7))—

1 “(I) by the lessee (or any sublessee) of such portion, or

2
3 “(II) by the lessor of such portion,

4
5 “(ii) such portion is to be occupied exclusively by the lessee (or any sublessee) of
6 such portion, and

7
8 “(iii) such improvement is placed in service more than 3 years after the date
9 the building was first placed in service.

10
11 “(B) CERTAIN IMPROVEMENTS NOT INCLUDED.—Such term shall not include any improvement for which the expenditure is attributable to—

12
13 “(i) the enlargement of the building,

14
15 “(ii) any elevator or escalator,

16
17 “(iii) any structural component benefiting a common area, and

18
19 “(iv) the internal structural framework of the building.

20
21 “(C) DEFINITIONS AND SPECIAL RULES.—

22 For purposes of this paragraph—

23 “(i) COMMITMENT TO LEASE TREATED AS LEASE.—A commitment to enter
24 into a lease shall be treated as a lease, and

1 the parties to such commitment shall be
2 treated as lessor and lessee, respectively.

3 “(ii) RELATED PERSONS.—A lease be-
4 tween related persons shall not be consid-
5 ered a lease. For purposes of the preceding
6 sentence, the term ‘related persons’
7 means—

8 “(I) members of an affiliated
9 group (as defined in section 1504),
10 and

11 “(II) persons having a relation-
12 ship described in subsection (b) of
13 section 267; except that, for purposes
14 of this clause, the phrase ‘80 percent
15 or more’ shall be substituted for the
16 phrase ‘more than 50 percent’ each
17 place it appears in such subsection.

18 “(9) QUALIFIED RETAIL IMPROVEMENT PROP-
19 erty.—

20 “(A) IN GENERAL.—The term ‘qualified
21 retail improvement property’ means any im-
22 provement to an interior portion of a building
23 which is nonresidential real property if—

24 “(i) such portion is open to the gen-
25 eral public and is used in the trade or

1 business of selling tangible personal prop-
 2 erty or services to the general public, and
 3 “(ii) such improvement is placed in
 4 service more than 3 years after the date
 5 the building was first placed in service.

6 “(B) CERTAIN IMPROVEMENTS NOT IN-
 7 CLUDED.—Such term shall not include any im-
 8 provement for which the expenditure is attrib-
 9 utable to—

10 “(i) the enlargement of the building,

11 “(ii) any elevator or escalator, or

12 “(iii) the internal structural frame-
 13 work of the building.”.

14 (b) COORDINATION WITH CELLULOSIC BIOMASS
 15 ETHANOL PLANT PROPERTY.—Paragraph (4) of section
 16 168(l) of the Internal Revenue Code of 1986 is amended
 17 by adding at the end the following new subparagraph:

18 “(D) BONUS DEPRECIATION PROPERTY.—
 19 Such term shall not include any property to
 20 which subsection (k) applies.”.

21 (c) CONFORMING AMENDMENTS.—

22 (1) Section 168(e)(6) of the Internal Revenue
 23 Code of 1986 is amended by striking “section
 24 168(k)(3)” and inserting “section 168(k)(8)”.

25 (2) Section 168(l) of such Code is amended—

1 (A) in paragraph (4), by striking
 2 “168(k)(2)(D)(i)” and inserting
 3 “169(k)(3)(A)”.

4 (B) by striking paragraph (5) and insert-
 5 ing the following:

6 “(5) SPECIAL RULES.—For purposes of this
 7 subsection, rules similar to the rules of paragraph
 8 (4) of section 168(k) shall apply, except that in ap-
 9 plying such paragraph—

10 “(A) the starting date shall be one day
 11 after the date of the enactment of subsection
 12 (l),

13 “(B) the ending date shall be January 1,
 14 2013, and

15 “(C) ‘qualified cellulosic biomass ethanol
 16 plant property’ shall be substituted for ‘quali-
 17 fied property’ in clause (iv) thereof.”, and

18 (C) in paragraph (6), by striking
 19 “168(k)(2)(G)” and inserting “168(k)(6)”.

20 (3) Section 1400L(b)(2) of such Code is
 21 amended—

22 (A) in subparagraph (A)(i)(I), by inserting
 23 “(determined without regard to subclauses (V)
 24 and (VI) thereof)” after “168(k)(2)(A)(i)”,

1 (B) in subparagraph (C)(ii), by striking
 2 “168(k)(2)(D)(i)” and inserting
 3 “168(k)(3)(A),”

4 (C) in subparagraph (C)(iv), by striking
 5 “168(k)(2)(D)(iii)” and inserting
 6 “168(k)(3)(B),” and

7 (D) in subparagraph (E), by striking
 8 “168(k)(2)(G)” and inserting “168(k)(6)”.

9 (4) Section 1400L(c) of such Code is amend-
 10 ed—

11 (A) in paragraph (2), by striking
 12 “168(k)(3)” and inserting “168(k)(8),” and

13 (B) in paragraph (5), by striking
 14 “168(k)(2)(D)(iii)” and inserting
 15 “168(k)(3)(B)”.

16 (5) Section 1400N(d) of such Code is amend-
 17 ed—

18 (A) in paragraph (2)(A)(i)(I), by inserting
 19 “(determined without regard to subclauses (V)
 20 and (VI) thereof)” after “168(k)(2)(A)(i),” and

21 (B) in paragraph (2)(B)(i), by striking
 22 “168(k)(2)(D)(i)” and inserting
 23 “168(k)(3)(A),”

24 (C) by striking paragraph (3) and insert-
 25 ing the following:

1 “(5) SPECIAL RULES.—For purposes of this
 2 subsection, rules similar to the rules of paragraph
 3 (4) of section 168(k) shall apply, except that in ap-
 4 plying such paragraph—

5 “(A) the starting date shall be August 28,
 6 2005,

7 “(B) the ending date shall be January 1,
 8 2008, and

9 “(C) ‘qualified Gulf Opportunity Zone
 10 property’ shall be substituted for ‘qualified
 11 property’ in clause (iv) thereof.”, and

12 (D) in paragraph (4), by striking
 13 “168(k)(2)(G)” and inserting “168(k)(6)”, and

14 (E) in paragraph (6)(B)(ii)(II), by insert-
 15 ing “(determined without regard to subclauses
 16 (V) and (VI) thereof)” after “168(k)(2)(A)(i)”.

17 (d) EFFECTIVE DATE.—The amendments made by
 18 this section shall apply to property placed in service after
 19 December 31, 2007.

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